

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 190

The question is whether the City's Department of Land Utilization [DLU] recommended, or "selected," a land use advisor [Mr. X] in private practice as a consultant for a nonprofit social service corporation [the Corporation].

The Ethics Commission [Commission] does not believe that the DLU arranged for, or "selected," the land use advisor to be a consultant for the Corporation.

The Commission understands the facts to be as follows:

The Corporation has a building under construction in Area X of Honolulu and required a Site Review Permit [SRP]. Such permits are issued by the DLU. The Concerned Citizens of Area X [CCAX], a nonprofit corporation, opposes the construction, and the person requesting this opinion is a member of the CCAX.

Mr. X is a land use consultant for the Corporation concerning its building that is under construction. He is also a former employee of the DLU, his City employment having terminated in (date). Between (date) and (date), Mr. X worked for the Corporation free of charge. Since (date), the Corporation has compensated him for his services.

According to the minutes of the meeting of the Corporation Working Group of (date), Mr. X stated that he "came on the project at the request of the DLU." As a result of this statement, the person requesting this opinion believes that the DLU arranged for Mr. X to volunteer as a consultant for the Corporation and therefore should be required to arrange for the CCAX to have a consultant free of charge. According to the deputy director of the DLU, representatives of the DLU recommended to the board of directors of the Corporation that it hire a land use consultant who knew the DLU procedures concerning SRP's. The deputy director stated also that the representatives of the DLU did not recommend Mr. X by name.

According to Mr. X, employees of the DLU informed him that the Corporation might benefit from having his services because he was familiar with DLU procedures.

According to a representative of the Corporation's board of directors, the DLU did not formally or informally recommend Mr. X by name as a consultant for the Corporation. He also states that

he has known Mr. X for about five years and asked him to work on behalf of the Corporation, initially as a volunteer, of his own accord.

The questions presented are 1) whether personnel of a City agency may violate Section 11-104, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], relating to fair and equal treatment, by arranging for a private party to have a consultant who is familiar with that agency's procedures; and 2) whether in this case the facts as stated above support a finding that the DLU selected Mr. X as a consultant for the Corporation.

Each of these questions is presented separately.

I. Whether personnel at a City agency may violate Section 11-104, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.) [RCH], relating to fair and equal treatment, by arranging for a private party to have a consultant who is familiar with that agency's procedures.

The general rule appears in Section 11-104, RCH, which states as follows:

Fair and Equal Treatment -- Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Pursuant to this standard of conduct, the Commission believes it is theoretically possible for a City agency to improperly secure for a private party an unfair advantage by selecting for such party a consultant in private practice. However, whether a City agency has done so turns on the facts of each case.

II. Whether in this case the facts as stated above support findings that the DLU arranged for Mr. X to be a consultant for the Corporation.

In this case, the Commission finds that the DLU did not recommend or otherwise arrange for Mr. X to be a consultant for the Corporation. The Commission bases this finding on the following evidence:

1. Mr. X has told the Commission that the DLU did not ask him to be a consultant for the Corporation.
2. The Deputy Director of the Department of Land Utilization has stated that representatives of the DLU recommended to the Corporation's board of directors that it hire a consultant but that such representatives did not name Mr. X.
3. A representative of the Corporation's board of directors has stated that representatives of the DLU did not recommend Mr. X as a consultant; that a member of the board has known him socially for about five years; and that the member asked Mr. X to be a consultant for the Corporation.

The Commission believes this evidence clearly and convincingly outweighs Mr. X's alleged statement at a meeting of the Corporation Working Group that the DLU asked him to work for the Corporation. Therefore, the Commission believes that representatives of the DLU did not violate Section 11-104, RCH.

In conclusion, the Commission has been asked to determine whether representatives of the DLU unfairly secured for the Corporation the advantage of having a volunteer consultant who was familiar with the DLU's procedures. The Commission believes that theoretically representatives of a City agency may violate Section 11-104, RCH, by arranging for a private party to have a consultant. However, in this case the facts support the finding that the DLU's representatives did not arrange for Mr. X to be a consultant for the Corporation. Therefore, the Commission believes that representatives of the DLU did not violate Section 11-104, RCH.

Dated: September 28, 1988

JANE B. FELLMETH
Chair, Ethics Commission